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Note verbale dated 3 June 2015 from the Permanent Mission of Bosnia and Herzegovina to the United Nations Office and other international organizations in Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of Bosnia and Herzegovina to the United Nations Office and other international organizations in Geneva presents its compliments to the Universal Periodic Review Branch of the Office of the United Nations High Commissioner for Human Rights, and has the honour to transmit herewith the observations of Bosnia and Herzegovina on the draft report of the Working Group on the Universal Periodic Review (second cycle) (see annex).

The Permanent Mission has the honour to request the Office of the High Commissioner to circulate the present note and the attachment thereto* as a document of the twenty-ninth session of the Human Rights Council under agenda item 6.

* Reproduced as received, in the language of submission only.

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Annex

[English only]

Observations of Bosnia and Herzegovina on the draft report of the Working Group on the Universal Periodic Review – Second cycle (A/HRC/WG.6/20/L.X)

Rights of the Child

Recommendations 107.1. and 107.2., 107.106., 107.107., 107.18., 107.25., 107.70. 107.75., 107.76., 107.77., 107.79., 107.101., 107.140., 107.141., 107.142., 107.144. and 107.145. are accepted.

Recommendations 107.19., 107.74., 107.78., 107.88., 107.135. and 107.147. are partially accepted.

Recommendation 107.19

As a continuation of on-going activities to implement the UN Convention on the Rights of the Child, in July 2011, the Council of Ministers adopted the Action Plan for Children in Bosnia and Herzegovina for the period 2011 – 2014, which defined the priority objectives and measures to take for the protection of children. The Republika Srpska Government believes that the development of programmes to protect children is within exclusive competence of the Entities, while the Government of the Federation of Bosnia and Herzegovina has accepted the recommendation. The recommendation is acceptable insofar as it relates to possible recruitment and use of children in armed conflicts and to fulfilment of international obligations and commitments under international conventions.

Recommendation 107.74

Bosnia and Herzegovina has continued follow-up activities to improve the human rights of children in BiH and implement the recommendation of the Committee on the Rights of the Child. The Republika Srpska Government has reported that the implementation of the Family Law, the Criminal Code and the Law on Misdemeanours ensured adequate protection of the child from all forms of violence and abuse in accordance with international standards, while the Government of the Federation of Bosnia and Herzegovina has accepted the recommendation. The recommendation is acceptable insofar as it relates to the process of harmonization of the laws applicable in BiH.

Recommendation 107.78

Owing to a continuous process of accession to new conventions and protocols as well as to recommendations of CRC, Bosnia and Herzegovina should further improve the existing laws that apply in BiH. The position of the Republika Srpska Government is that this Entity's most recent amendments to the Criminal Code have brought about compliance with international conventions and standards, while the Government of the Federation of Bosnia and Herzegovina has accepted the recommendation. The recommendation is acceptable insofar as it relates to the further process of bringing the legislation into line not only with UN international standards but also with EU acquis standards at the appropriate levels of government in accordance with the constitutional competences of Bosnia and Herzegovina and Entities.

Recommendation 107.88

In January 2015, the Council of Ministers adopted an analytical report on the implementation of the 2011 – 2014 Action Plan for Children, which was based on an assessment of the degree the measures had been implemented. The position of the Republika Srpska Government is that a comprehensive national law on the rights of the child cannot be enacted, because this is a matter within competence of Entities, while the Government of the Federation of Bosnia and Herzegovina has accepted the recommendation. The recommendation is acceptable insofar as it relates to ensuring the effective ways of reporting violence against children and to taking initiatives for the adoption of the Framework Law on the Rights of the Child at the state level.

Recommendation 107.135

In accordance with the Constitution of Bosnia and Herzegovina, the Republika Srpska, ten cantons in the Federation of BiH and Brcko District of BiH have complete and undivided competence over education. The position of the Republika Srpska Government is that the recommendation conflicts with the constitutional competencies over education, while the Government of the Federation of Bosnia and Herzegovina has accepted the recommendation. The recommendation is acceptable insofar as it relates to all levels of government ensuring that the content of school textbooks promotes and encourages tolerance among ethnic minority groups in BiH.

Recommendation 107.147

In accordance with the Constitution of Bosnia and Herzegovina, the Republika Srpska, ten cantons in the Federation of BiH and Brcko District of BiH have complete and undivided competence over education. The position of the Republika Srpska Government is that that the recommendation conflicts with the constitutional competencies over education, while the Government of the Federation of Bosnia and Herzegovina and appropriate cantonal ministries that transmitted their positions have accepted the recommendation. The recommendation is acceptable insofar as it relates to taking an initiative to design a single harmonized national school core curriculum, agreed upon by the representatives of the country's ethnic groups and national minorities of BiH.

Constitutional changes

Recommendations 107.3., 107.123., 107.124., 107.125., 107.126., 107.127., 107.128. and 107.129. are accepted.

Justice and anti-discrimination

Recommendations 107.4. and 107.57. are accepted.

Effective judiciary in human rights protection

Recommendations 107.92., 107.93. and 107.101. are accepted.

Recommendations 107.94., 107.95., 107.96. are partially accepted

Recommendation 107.94

Bosnia and Herzegovina applies four laws relating to the protection of witnesses that need continued coordination and improvement. The position regarding the quality of witness protection is different, with the Ministry of Security and the Government of the Federation being in favour of this recommendation and the Republika Srpska Government having the position that this Entity adequately implements the witness protection program.

Recommendation 107.95.

With regard to transfer of competences, the Enitity Governments in Bosnia and Herzegovina have different positions, the Republika Srpska Government having the position that it does not accept transfer of competences from the Entities to the level of Bosnia and Herzegovina.

This recommendation is inconsistent with the Constitution of BiH, Entity constitutions and recommendations from structural dialogue on judicial reform between the EU and BiH.

Recommendation 107.96.

The position of the Republika Srpska is that it does not accept this recommendation because the legal provisions governing preventive detention fully complies with international standards in this area and due process is ensured in all cases of detention without any exceptions.

Human rights promotion and protection

Recommendations 107.5., 107.104., 107.105., 107.16., 107.17., 107.21., 107.23. and 107.122. are accepted.

Ombudsmen

Recommendations 107.6., 107.7., 107.8., 107.9., 107.10., 107.11. and 107.12. are accepted.

Recommendations 107.13., 107.14. and 107.15. are partially accepted

The establishment of the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture is an activity that the authorities of Bosnia and Herzegovina are trying to implement, but there are different positions in connection with the establishment of modalities of this mechanism. The Republika Srpska Government suggests that the prevention mechanisms should be established at all levels in accordance with multilayer division of competences, but the positions of other institutions concerned is that they support the establishment of a NPM; so, activities to fulfil obligations under the Optional Protocol to the UN Convention against Torture will continue in the future.

Vulnerable group rights

Recommendations 107.20., 107.22., 107.26., 107.37., 107.39. 107.50., 107.51., 107.52., 107.53., 107.58., 107.98. 107.136., 107.139. and 107.143. are accepted

Recommendations 107.59., 107.60., 107.61., 107.62., 107.63. and 107.64. are partially accepted

Bosnia and Herzegovina is taking steps to pass and harmonize laws relating to processing of war crimes cases and sexual violence cases following international standards and programmes designed to ensure effective access to justice for all victims of wartime sexual violence and to thoroughly investigate acts of sexual violence committed during the conflict. In recent years, the judiciary and other relevant authorities have significantly improved and accelerated procedures related to the provision of justice, reparation and rehabilitation to the victims of wartime rape and sexual violence. The Republika Srpska Government has not accepted these recommendations expressing the opinion that most of these activities have already been implemented while the position of the Government of the Federation of BiH and the authorities at the level of Bosnia and Herzegovina is that, based on this recommendation, further activities should be intensified to improve their protection.

Bosnia and Herzegovina makes efforts to implement the National War Crimes Prosecution Strategy and to amend the Criminal Code regarding the definition of war crimes of sexual violence in accordance with international standards.

Training of judges and prosecutors in BiH is carried out by the Entity training centres with a view to making progress in resolving pending cases, as well as those involving war crimes and sexual violence.

With regard to the recommendation relating to different types of initiatives and analysis of the situation with recommendations given and the recommendations relating to the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Republika Srpska has taken a position that these recommendations should be partially accepted.

Recommendations 107.97., 107.99., 107.100. and 107.134. are partially accepted.

Recommendation 107.97

Bosnia and Herzegovina has sought to get agreement on a legal solution to the rights of victims of torture in BiH, in which a proposal for solution to the reparation / compensation to victims of torture is to be regulated in a uniform way for all victims of torture in BiH. Given there are still different views on this issue by the Entity governments, in the coming period we expect reconciliation of the opinions of the Entity governments and relevant authorities of Bosnia and Herzegovina in terms of the legal solutions that will meet the needs of BiH and regulate the rights of victims of torture and the right to reparation / compensation.

Recommendation 107.99

Bosnia and Herzegovina will take actions to harmonize the BiH Criminal Code applied in war crimes cases, to define adequately the condition of victims of war and to provide necessary reparation. The Republika Srpska Government has already amended the Criminal Code to bring it in line with international conventions and standards in this matter and it is up to the Federation of BiH to make the same amendments.

Recommendation 107.100

Bosnia and Herzegovina authorities have been trying to harmonize the penal code applied in cases of war crimes. We remind you that the 18 July 2013 judgment of the European Court of Human Rights in Maktouf and Damjanovic against Bosnia and Herzegovina found that there had been a violation of Article 7, paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in this particular case, i.e. that the 2003 Criminal Code was incorrectly applied instead of the 1976 SFRY Criminal Code in this particular case.

The Republika Srpska has partially accepted this recommendation with the position that we should apply the law in force at the time of the offense and a new law should be applied only if it is more favourable for the perpetrator. This correct position was confirmed by the judgments of the Court of Human Rights in Strasbourg. The Government of the Federation of BiH has not accepted this recommendation.

Recommendation 107.134

Bosnia and Herzegovina has a system in which all people in Bosnia Herzegovina including returnees, people with disabilities or Roma have access to public services, including health care and education without any discriminatory provisions in the valid legislation. The Government of the Federation of Bosnia and Herzegovina has not accepted this recommendation, while the Republika Srpska Government has accepted this recommendation. The recommendation is acceptable insofar as it relates to the improvement of this system of access to public services, including health care and education without any discriminatory provisions in the valid legislation.

Capacity building in the area of anti-discrimination

Recommendations 107.24., 107.28., 107.29., 107.38., 107.39. and 107.142. are accepted.

Recommendation 107.27. and 107.30. are partially accepted.

Bosnia and Herzegovina authorities have partially accepted recommendations 106.27. and 106.30. given by the Human Rights Council. The recommendations relate to the development of a national plan to combat discrimination and an anti-discrimination strategy and enforcement of the Law on the Prohibition of Discrimination. The Law on the Prohibition of Discrimination was passed in 2009 and guarantees that any person or group of persons who are considered to be discriminated against may seek protection of their rights in existing judicial and administrative proceedings. Bosnia and Herzegovina is a signatory to numerous international instruments that promote and protect human rights and freedoms and respects the principle of non-discrimination in various areas of social life. On the basis of data collected, BiH continuously reports to the international human rights bodies on the implementation of international agreements of multilateral character that it has signed, ratified or accepted by succession.

The Republika Srpska Government has taken the position that a national plan to combat discrimination and an anti-discrimination strategy should be developed at the Entity level due to constitutional competences in the fields that this matter covers. The recommendations have been accepted by the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina.

Gender equality

Recommendations 107.32., 107.34., 107.35., 107.36., 107.130., 107.131., 107.132. and 107.133. are accepted.

Recommendation 107.33. is partially accepted.

The Law on Gender Equality is continuously developed through the activities of the Agency for Gender Equality and Entity gender centres and the second part of the recommendations relating to constitutional provisions prohibiting discrimination against women have already been incorporated in the provisions of the Constitutions of BiH and Entities prohibiting discrimination on the grounds of sex.

Minority rights

Recommendations 107.31., 107.40., 107.47., 107.108., 107.109., 107.119., 107.120., 107.121., 107.138., 107.146., 107.159., 107.160., 107.161., 107.162. and 107.163. are accepted.

Recommendation 107.46. is not accepted-

Laws in Bosnia and Herzegovina do not contain discriminatory provisions.

Hate speech

Recommendations 107.41., 107.42., 107.43. and 107.45. are accepted.

Recommendation 107.44. is partially accepted.

Bosnia and Herzegovina makes efforts to strengthen legislation to combat incitement to hate and discrimination on the grounds of ethnicity, culture, religion or nationality. The recommendation has been partially accepted as the Republika Srpska Government has taken the position that the most recent amendments to the Criminal Code of the Republika Srpska have already criminalized and punishes hate speech and criminal offenses motivated by hatred. The Government of the Federation of Bosnia and Herzegovina has accepted this recommendation.

Freedom of religion

Recommendations 107.48., 107.49. and 107.110. are accepted.

Recommendation 107.54. is accepted.

Death penalty abolition

Recommendations 107.55. and 107.56. are accepted .

Protection from domestic violence

Recommendations 107.67., 107.68. and 107.69. are accepted.

Recommendation 107.65., 107.66. 107.71. and 107.72. are partially accepted.

Bosnia and Herzegovina has partially accepted this recommendation, given it has established a system of monitoring and implementing the legislation to combat domestic violence and other forms of violence against women, which needs to be strengthened and improved as planned in the future.

Bosnia and Herzegovina carries out activities to develop a framework strategy for the implementation of the Framework Convention for the Prevention and Protection Against Domestic Violence, while basic competences of institutions that will implement the strategy are competences at the level of Entities. The position of the Republika Srpska Government is that it is necessary to adopt guidelines for the implementation of the Convention and each institution should define concrete measures.

Bosnia and Herzegovina is making efforts to harmonize the law on sexual and domestic violence with a view to punishing every act of violence against women, while the Republika Srpska considers that the legal protection is afforded to victims of domestic violence and violence against women through the Criminal Code and the Law on Misdemeanour of RS, so the legal preconditions for zero tolerance for this kind of violence have been created. The present legal solutions are fully in line with international standards in this area.

Trafficking in human beings

Recommendations 107.73., 107.76., 107.81., 107.82., 107.83., 107.84., 107.86., 107.87., 107.89., 107.90. and 107.91. are accepted.

Recommendation 107.80. i 107.85. are partially accepted.

Bosnia and Herzegovina has a system of updating trafficking victims based in the BiH Ministry of Security and a system of support for victims of human trafficking which is funded from the budget of the Ministry of Security for foreign trafficking victims and from the budget of the Ministry for Human Rights and Refugees for national victims of trafficking. The position of the Republika Srpska Government is that the existing data collection system should be adjusted in accordance with responsibilities of other authorities. The recommendation is acceptable insofar it applies to improvement of the system for providing assistance and support to victims of human trafficking.

Corruption

Recommendations 107.102. and 107.103. are accepted.

Freedom of expression and the free media

Recommendations 107.111., 107.112,. 107.113., 107.114., 107.115., 107.116. and 107.117. are accepted.

Freedom of assembly

Recommendation 107.118. is accepted.

Protection of persons with disabilities

Recommendations 107.148., 107.149., 107.153., 107.154., 107.157. and 107.158. are accepted.

Recommendation 107.150., 107.151., 107.152., 107.155. and 107.156. are partially accepted.

The Entities have exclusive competence over the protection of persons with disabilities. The Republika Srpska Government did not support development of a unified National Action Plan in the field of people with disabilities on the basis of the UN Convention on People with Disabilities as BiH had already designed "Disability Policy in Bosnia and Herzegovina" and adopted "Action Plan of the Council of Europe to promote the rights and full participation in society of people with disabilities: Improving the quality of life of people with disabilities in Europe, 206-2015". The Council of Ministers has formed a Council for Persons with Disabilities BiH, as an advisory and coordinating body that helps in monitoring the implementation of the UN Convention for Persons with Disabilities and the Entity governments and BD have already adopted the Strategy for the equalization of opportunities for persons with disabilities and formed bodies to monitor the strategy implementation.

Right to work, social security and health care.

Recommendation 107.137. is accepted.

Refugees and displaced persons

Recommendations 107.164., 107.165. and 107.166. are accepted.

Recommendation 107.167. is partially accepted.

The Government of the Federation of Bosnia and Herzegovina has accepted the recommendation, considering the exchange of experiences to be very useful in order to indicate the anomalies present in the educational system of our country, which is one of the ways of overcoming them, while the Republika Srpska Government considers that this recommendation is unclear.

Summary

Bosnia and Herzegovina has accepted 128 recommendations, has partially accepted 38 recommendations and has not accepted 1 recommendation (107.46.).